

24 JUN 1969

Mr. James M. Frey
Office of Assistant Director
for Legislative Reference
Bureau of the Budget
Washington, D. C. 20503

Dear Mr. Frey: Not referred to OMB. Waiver
applies.

This is in response to your request of 12 June 1969 for views of this Agency on the Department of Justice draft bill "To amend Title 28 of the United States Code to provide for the defense of suits against Federal employees and for other purposes."

This Agency is in favor of making comprehensive the exclusive remedy provision of the Federal Tort Claims Act as proposed in section 1 of the draft bill.

Pursuant to section 3 of the draft bill a case may be remanded to the state court, without intervening appeal, if the United States district court finds that the act or omission giving rise to the suit was not within the scope of employment. We believe this critical determination should be subject to appellate review and to that end recommend the following addition as the last sentence of section 3:

"Notwithstanding the limitations in Title 28, U.S.C. § 1447(d), the question of whether an employee was acting within the scope of his office or employment may be reviewed on appeal in accordance with Rule 3, Federal Rules of Appellate Procedure."

We appreciate this opportunity to comment on the proposed bill.

Sincerely,

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Distribution:

Orig. & 1 - Addressee
1 - OGC
① - Subj.
1 - Chrono

John M. Maury
Legislative Counsel

25X1

OLC/ (23 June 69)

CONCUR

Deputy General Counsel 25X1
24 JUN 1969

DOJ review(s)
completed.

23 June 1969



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1. We requested an opportunity to comment on this draft bill. It makes comprehensive the exclusive remedy feature of the Tort Claims Act which feature is now only available to Federal employees in tort claims arising out of driving and in the Veterans Administration while performing medical functions.

2. Under the bill, if the district court found that the act complained of was not within the scope of employment the case would be remanded to the state court without intervening appeal. This is in keeping with the general rule which applies except in certain civil rights cases. OGC, after touching base with Justice, recommends that an appeal lie in connection with the district court determination concerning the scope of employment question.

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*John Warner has
approved.*

EXECUTIVE OFFICE OF THE PRESIDENT

BUREAU OF THE BUDGET

WASHINGTON, D.C. 20503

JUN 12 1969

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Civil Service Commission
Department of Transportation
Department of Defense
Department of Health, Education and Welfare
Department of the Interior
Atomic Energy Commission
Veterans Administration
Department of Commerce
Department of Agriculture
Department of Housing and Urban Development
Department of Labor
Post Office Department
Department of State
Department of the Treasury
General Services Administration
National Aeronautics and Space Administration
United States Information Agency
Central Intelligence Agency

SUBJECT: Justice draft bill "To amend Title 28 of the United States Code to provide for the defense of suits against Federal employees and for other purposes."

The Bureau would appreciate receiving the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with Budget Circular A-19.

To permit expeditious handling, it is requested that your reply be made within 30 days.

Questions should be referred to Jerome Sohns, code 103, extension 3868.

MAILED

JUN 12 1969

BUREAU OF THE BUDGET

Enclosures

Copy of draft and explanatory matter

JSohns:nf-6-12-69

James M. Frey
James M. Frey
For Assistant Director
for Legislative Reference

BB FORM 4

Bureau of the Budget
ROUTE SLIP
TO hell

Take necessary action ☐
Approval or signature ☐
Comment ☐
Prepare reply ☐
Discuss with me ☐
For your information ☐
See remarks below ☐

FROM

Jerry

DATE

6/12

REMARKS

Pls request views from:

- CIA
- 30 days
- Contact - me

(We sent this out to 17
other agencies last week)



Office of the Attorney General
Washington, D. C.

The Speaker
House of Representatives
Washington, D. C. 20515

Dear Mr. Speaker:

Enclosed for your consideration and appropriate reference is a legislative proposal "To amend Title 28 of the United States Code to provide for the defense of suits against Federal employees and for other purposes."

This proposal is intended to provide for the immunity of Federal employees from personal liability in tort for acts done in the scope of their employment. The Federal Tort Claims Act as passed in 1946 did not bar suits against Government employees who committed torts. However, if a civil action is brought against the Government under 28 U.S.C. 1346(b), a judgment in such action constitutes a complete bar to any action against Federal employees for damages for the same act or omission. 28 U.S.C. 2676.

Two statutes were subsequently enacted which barred suit against two particular classes of Federal employees--Government drivers and medical personnel of the Veterans Administration. The Government Drivers Act passed in 1961, Public Law 87-258, provides that the remedy by suit against the United States under 28 U.S.C. 1346(b) shall be the exclusive remedy when the damage claimed results from the operation of a motor vehicle by an employee of the government while acting within the scope of his office or employment. The procedure by which the Drivers Act is invoked is set forth in 28 U.S.C. 2679(b)-(c). The action is usually brought in the State court and is removed to the Federal court upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the accident. Upon removal, the United States is substituted for the employee as defendant and the action proceeds in the manner prescribed for any other tort claim against the United States.

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A similar statute was enacted in 1965, Public Law 89-311, 38 U.S.C. 4116, with respect to medical personnel of the Veterans Administration. In succeeding sessions of Congress, bills have been introduced proposing the protection of other classes of Federal employees such as FBI agents and the flying personnel of the Federal Aviation Agency.

It is this Department's opinion that the general principle of immunity of Federal employees is a desirable one and that piecemeal legislation should be avoided. Accordingly, this proposed bill would afford equality of treatment by extending the immunity from personal liability in tort to all Federal employees.

Section 1 of the proposed bill would amend 28 U.S.C. 2679(b) by extending its applicability to all Federal employees acting within the scope of their office or employment. Further provisions of the proposal are intended to make it clear that the previously existing tort remedy against Federal employees is now barred and that the exclusive remedy of compensation in these matters is pursuant to the procedures of the Federal Tort Claims Act.

I recommend the introduction and prompt enactment of this proposal.

The Bureau of the Budget has advised that there is no objection to the enactment of this legislation from the standpoint of the Administration's program.

Sincerely,

Attorney General

..... CONGRESS

..... SESSION

H. R.

(NOTE: Fill in all blank lines except those provided for the date and number of bill.)

IN THE HOUSE OF REPRESENTATIVES

Mr. introduced the following bill; which was referred to
the Committee on

A BILL

To amend title 28 of the United States Code, to provide
for the defense of suits against Federal employees, and
for other purposes. (Insert title of bill here)

- 1 *Be it enacted by the Senate and House of Representatives of the*
- 2 *United States of America in Congress assembled,*

That section 2679(b) of title 28, United States Code, is
amended to read as follows:

"(b) The remedy against the United States provided
by sections 1346(b) and 2672 of this title for injury or
loss of property, or personal injury or death caused by
the negligent or wrongful act or omission of any employee
of the Government while acting within the scope of his
office or employment is exclusive of any other civil action
or proceeding arising out of or relating to the same subject
matter against the employee whose act or omission gave rise
to the claim, or against the estate of such employee."

Sec. 2. Section 2679(d) of title 28, United States Code,
is amended by inserting in the first sentence the words
"office or" between "scope of his" and "employment."

- 2 -

Sec. 3. Section 2679(d) of title 28, United States Code, is amended by deleting the second sentence and inserting in lieu thereof "After removal the United States shall have available all defenses to which it would have been entitled if the action had originally been commenced against the United States under the Federal Tort Claims Act. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the employee whose act or omission gave rise to the suit was not acting within the scope of his office or employment, the case shall be remanded to the State court."

Sec. 4. Section 2680(h) of title 28, United States Code, is amended by deleting "assault, battery," and inserting in lieu thereof "assault or battery (other than assault or battery arising out of the negligent performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations)."

Sec. 5. Section 4116 of title 38, United States Code, is repealed.

Sec. 6. This Act shall apply to all claims accruing on or after the first day of the third month which begins following the date of its enactment.

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TRANSMITTAL SLIP		DATE 16 June 1969
TO: Mr. <input type="text"/>		
ROOM NO. 7D01	BUILDING	
REMARKS: For review and suggested statement of Agency position. Please note deadline on response is 30 days. 25X1 <input type="text"/>		
FROM: OLC		
ROOM NO. 7D35	BUILDING Hqs	EXTENSION <input type="text"/>

FORM NO. 241
1 FEB 55

REPLACES FORM 36-9
WHICH MAY BE USED.

(47)

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